

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**RALPH CORDY,**

**Defendant.**

**CASE NO. 8:06CR321**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 90). The government adopted the PSR. (Filing No. 91.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the enhancements to his offense level pursuant to U.S.S.G. §§ 2G2.2(b)(2) and 2G2.2(b)(4) in ¶¶ 22 and 23 of the PSR. The Defendant argues that the enhancements must be proved to a jury beyond a reasonable doubt. It is well settled that such enhancements may be proved to a sentencing judge by a preponderance of the evidence. *United States v. Alvarez*, 478 F.3d 864, 868 (8<sup>th</sup> Cir. 2007) (regarding U.S.S.G. § 2G2.2(b)(5)); *United States v. Johnson*, 450 F.3d 831, 833 (8<sup>th</sup> Cir. 2006) (regarding U.S.S.G. § 2G2.2(b)(1), (b)(2)(B) and (b)(3)).

The objections will be heard at sentencing. The burden is on the government by a preponderance of the evidence. If the parties need more than 30 minutes for the sentencing hearing, they shall notify Edward Champion, who will schedule the hearing accordingly.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 90) will be heard at sentencing as stated above;
2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 4<sup>th</sup> day of October, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge